

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAUL GRIMMETT,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
CORRECTIONAL SERVICES, et al.,

Defendants.

Case No. 15-cv-07351 (JPO) (SN)

**PLAINTIFF'S MOTION FOR
CLARIFICATION**

Plaintiff Paul Grimmett respectfully submits this motion for clarification due to an apparent inconsistency between the Court's May 24, 2017, Opinion and Order (Dkt. No. 91) (the "Opinion") on Defendants' motion to dismiss, and the Court's July 24, 2017, Order (Dkt. No. 94) (the "Order") directing Defendant Allan Matthew to answer the Second Amended Complaint ("SAC").

In the Opinion, the Court granted in part and denied in part Defendants' motion to dismiss the SAC. The Court held that the SAC sufficiently stated a claim for deliberate indifference to serious medical needs in violation of the 8th and 14th Amendments against Defendant Matthew, but that the SAC failed to state such a claim against Defendant Sharma. (Opinion at 9-10.) The Court further held that the SAC failed to state a claim of municipal liability against Defendant Corizon Medical Associates. (*Id.* at 12.)

Importantly, the Court recognized that, in addition to Plaintiff's constitutional and statutory claims, the SAC also alleged "state medical malpractice and negligence claims against all Defendants." (Opinion at 1.) Defendants moved to dismiss these claims on jurisdictional grounds, but the Court held that because it "has not dismissed all of Grimmett's federal claims, it

will retain supplemental jurisdiction over his state law claims [...] Accordingly, Defendants' motion to dismiss Grimmett's state law claims on jurisdictional grounds is denied." (*Id.* at 13.) The Opinion therefore appears to conclude that, while Plaintiff's constitutional claim against Dr. Sharma and its municipal liability claim against Corizon have been dismissed, his state law claims of medical malpractice and negligence against all Defendants – including Dr. Sharma and Corizon – remain alive.

The Court subsequently issued the Order on July 24, 2017, directing only "remaining defendant" Matthew to answer the SAC by July 28, 2017. However, because, for the reasons explained above, the state law claims against Defendants Sharma and Corizon remain a part of the case, Plaintiff respectfully submits that all three defendants should have been directed to answer the SAC, and requests that the Court enter an order clarifying that these claims remain against all three Defendants and setting a deadline for Defendants Sharma and Corizon to answer the SAC.

Dated: September 15, 2017
New York, New York

KOBRE & KIM LLP

By: s/ Joseph W. Slaughter
Joseph W. Slaughter

KOBRE & KIM LLP
800 Third Avenue
New York, New York 10022
Tel: +1 212 488 1200
Fax: +1 212 488 1220

Attorney for Plaintiff Paul Grimmett